

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

UNITED STATES POSTAL SERVICE

and

Case 05-CA-140963

**AMERICAN POSTAL WORKERS UNION,
AFL-CIO**

ORDER¹

The Respondent's Request for Special Permission to Appeal from Administrative Law Judge Paul Bogas's November 3, 2015 ruling rejecting the Respondent's assertion of a deliberative process privilege is granted, and the appeal is denied for the reasons stated below.

Counsel for the General Counsel asserts in his opposition brief that he and counsel for the Respondent have agreed that the Respondent need not produce documents wholly unrelated to the issues in this case; that the Respondent is asserting the deliberative process privilege only for such irrelevant documents; that the judge found the "head of the department" having control over the requested information has not invoked the deliberative process privilege, which is a prerequisite to the privilege's applicability;² and therefore, the only question raised in this application is whether the Respondent can assert the privilege for documents which counsel for the General Counsel has released the Respondent from producing. Based on these representations, which appear to be uncontroverted, we find there is no substantive

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² See *Landry v. FDIC*, 204 F.3d 1125 (D.C. Cir. 2000) cert. denied, 531 U.S. 924 (2000).

issue before the Board at this time, and the judge's ruling does not contemplate the production of documents that are no longer under subpoena. To the extent the parties may disagree as to which documents are "wholly unrelated to the issues raised in the case" the judge may conduct an in camera review of any disputed documents.

Dated, Washington, D.C., February 10, 2016.

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| PHILIP A. MISCIMARRA, | MEMBER |
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| KENT Y. HIROZAWA, | MEMBER |
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| LAUREN MCFERRAN, | MEMBER |
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